

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations.
(Brawley and Campo, California)

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MB Docket No. 05-219
RM-11249

NOTICE OF PROPOSED RULEMAKING

Adopted: June 23, 2005

Released: June 27, 2005

Comment Date: August 18, 2005

Reply Comment Date: September 2, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by CCR-Brawley IV, LLC ("Petitioner"), licensee of Station KSIQ(FM), Brawley, California, proposing the downgrade from Channel 241B to Channel 241B1 at Brawley, the reallocation of Channel 241B1 from Brawley to Campo, California, and the modification of Station KSIQ(FM)'s license accordingly. Petitioner states its intention to apply for the channel, if reallocated to Campo.

2. Petitioner filed its reallocation request pursuant to Section 1.420(i) of the Commission's rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest in the proposed allotment.¹ When considering a reallocation proposal, a comparison is made between the existing allotment and the proposed allotment to determine whether the reallocation would result in a preferential arrangement of allotments based upon the FM Allotment priorities.² In support of its proposal, Petitioner states that Campo is listed in the *2000 Rand McNally Commercial Atlas and Marketing Guide* with a population of 3,122 persons. Petitioner also states that Campo has many social, economic, and cultural indicia to qualify as a community for allotment purposes. Campo has six schools, all with Campo addresses. It also has its own library, Public Works Road Maintenance Department, Jury Services of the Superior Court, Probation Department, and its own Sheriff's Office, and Parks and Recreation Department. Campo is home of the Campo Tribal Hall. Campo has at least three churches, its own volunteer fire department, social organizations such as Veterans of Foreign Wars, a U.S. Post Office, and numerous businesses, all with Campo addresses: East County Lumber and Ranch, Dart, Peter – Independence Realty, Riverview Communications, Alpine Glass and Screen; Elmore Contractor Consultant, Mr. Handyman Can, Tillman Fence Company, McGuffies Backhoe, Gotesch Multimedia,

¹ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), recon. granted in part 5 FCC Rcd 7394 (1990).

² The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], See *Revision of FM Assignment Policies and Procedures*, 90 FCC Rcd 88, 91 (1988).

Mike Thing Pump Service, Mitch, Jack - Glen D. Mitchell Realtors, Mountain Satellite, Legacy Ranch, Read's Country Bumpkins, Campo Materials Company, and Golden Acorn Casino and Travel.

3. Moreover, Petitioner states the reallocation of Channel 241B1 at Campo will result in preferential arrangement of allotments because it will provide a first local aural transmission service, without depriving Brawley (population 22,052) of its sole local service. Stations KROP(AM) and KSEH(FM) would remain licensed to Brawley. Moreover, Petitioner claims that the proposed reallocation site at Campo will result in a 1.0 mV/m signal coverage of approximately 3,038.4 square kilometers containing 1,423,506 persons. Petitioner also claims that the current coverage at Brawley is approximately 11,426 square kilometers containing 138,901 persons, a net gain in service of 1,284,605 persons. However, our engineering analysis has revealed that the downgrade and reallocation to Campo would provide no net gain, but instead would create a net loss of service to an area of 4,550 square kilometers containing 102,302 persons. When computing gain and loss area data, our staff engineers calculate area and population served at the current site, and the area and population served at the proposed site. Due to the substantial discrepancy in the calculations, Petitioner is requested to clarify the methodology used to calculate the gain and loss data submitted. We note that Station KSIQ(FM)'s 70 dBu signal currently covers 100% of the El Centro, California Urbanized Area. At the proposed site, the 70 dBu signal will not cover any urbanized area, and a *Tuck* analysis is not required.³

4. The proposal warrants consideration because it could provide Campo, California with its first local aural transmission service, without depriving Brawley of its sole local service. An engineering analysis has determined that Channel 241B1 can be reallocated to Campo in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.9 kilometers (2.4 miles) north at coordinates 32-38-30 North Latitude and 116-28-05 West Longitude. Since Campo is located within 320 kilometers (199 miles) the U.S.-Mexican border, concurrence of the Mexican government has been requested. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest for the use of Channel 241B1 at Campo, California.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>Channel No.</u>		
<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Brawley, California	233B, 241B	233B
Campo, California	--	241B1

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

³ See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995); *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951) *RKO General, Inc. (KFRC) ("KFRC")*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck ("Tuck")*, 3 FCC Rcd 5374 (1988).

7. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 18, 2005, and reply comments on or before September 2, 2005, and are to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on counsel for Petitioner, as follows:

Howard M. Liberman, Esq.
Drinker, Biddle & Reath LLP
1500 K Street, N.W., Suite 1100
Washington, DC 20005

8. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁴ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

10. For further information concerning a proceeding listed above, contact Sharon P. McDonald, Media Bureau (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the

⁴ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549 (February 9, 1981).

proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See 47 C.F.R. Section 1.420(d).)

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in 47 C. F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W, Washington, D.C.